

1996

State of Utah v. Richard Ramirez : Brief of Appellant

Utah Court of Appeals

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Keith C. Barnes; Attorney for Appellant.

Barnard N. Madsen; Assistant Utah Attorney General; Attorneys for Appellee.

Recommended Citation

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 960795-CA

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,)	
)	
Plaintiff/Respondent,)	
)	Case No. 960795-CA
vs.)	
)	
RICHARD RAMIREZ,)	Classification Priority 2
)	
Defendant/Appellant.)	

BRIEF OF APPELLANT

Appeal from a Judgment, Sentence and Commitment following a jury trial in which the Defendant/Appellant was convicted of one count of Forcible Sodomy, a First-Degree Felony, Dealing Harmful Material to a Minor, a Third-Degree Felony, and Lewdness, a Class B Misdemeanor, in the Sixth Judicial District Court, in and for Kane County, State of Utah, the Honorable K. L. McIff presiding.

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Assistant Utah Attorney General
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P.O. Box 140854
Salt Lake City, Utah 84114-0854

FILED

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,)	
)	
Plaintiff-Respondent,)	
)	
vs.)	Case No. 960795-CA
)	
RICHARD RAMIREZ,)	
)	
Defendant-Respondent.)	

JURISDICTION OF THE COURT OF APPEALS

The jurisdiction of the Court is established by §78-2a-3(2)(j), Utah Code Annotated, 1953, as amended.

NATURE OF THE PROCEEDINGS

This is an appeal from a final Judgment, Sentence and Commitment dated October 28, 1996, following a jury trial in which the Defendant/Appellant was convicted of one count of Forcible Sodomy, a First-Degree Felony; Dealing Harmful Material to a Minor, a Third-Degree Felony and Lewdness, a Class B Misdemeanor, in the Sixth District Court, in and for Kane County, State of Utah.

The Defendant/Appellant contends that the evidence was insufficient to find him guilty of Forcible Sodomy, a First-Degree Felony and Dealing Harmful Material to a Minor, a Third-Degree Felony.

ISSUES PRESENTED ON APPEAL

The issues presented on appeal are as follows: (a) Was there sufficient evidence to convict the Defendant/Appellant on Count I of the Information, Forcible Sodomy, a First-Degree Felony?

(b) Was there sufficient evidence to convict the Defendant/Appellant on Count II of the Information, Dealing Harmful Material to a Minor, a Third-Degree Felony? (c) Was Mr. Ramirez denied effective assistant of counsel due to former defense counsel's failure to show the Defendant/Appellant his Pre-Sentence Investigation Report prior to sentencing and/or due to former defense counsel's failure to motion the Court for a suppression hearing as it related to the search warrant and subsequent arrest of Defendant/Appellant? and (d) Did the trial court err by failing to grant Defendant/Appellant's Motion for Directed Verdict at the closing of the State's case?

DETERMINATIVE STATUTES OR RULES

Sixth Amendment, United States Constitution provides that:

In all criminal prosecutions, the accused shall enjoy the right to...have assistance of counsel for his defense.

Article I, Section 7 of the Utah Constitution provides:

No person shall be deprived of life, liberty or property, without due process of law.

STATEMENT OF THE CASE

A. Nature of the Case

This appeal is from a Judgment, Sentence and Commitment following a jury trial where the Defendant/Appellant was convicted of Forcible Sodomy, a First-Degree Felony; Dealing Harmful Material to a Minor, a Third-Degree Felony; and Lewdness, a Class B Misdemeanor. The Defendant/Appellant was convicted on all count which allege specific incidences arising on May 18, 1996. The Defendant/Appellant asserts that the evidence was insufficient to convict him because at no time during the trial did evidence show

that the Defendant/Appellant forced the alleged victim to perform sodomy with Defendant/Appellant nor was there evidence that the alleged victim could identify the material which was defined as harmful material in the offense of Dealing Harmful Material to a Minor, a Third-Degree Felony.

B. Course of the Proceedings

Defendant/Appellant was charged with one count of Forcible Sodomy, a First-Degree Felony; Dealing in Harmful Material to a Minor, a Third-Degree Felony; Failure of Sex Offender to Register, a Class A Misdemeanor; and Lewdness, a Class B Misdemeanor. A jury trial on the matter was held on August 28, 1996, in the Sixth Judicial District Court, in and for Kane County, State of Utah.

C. Disposition at Trial Court

The jury found the Defendant/Appellant guilty on Counts I, II and IV of the Information. The Defendant/Appellant was referred to Adult Probation and Parole for a Pre-Sentence Investigation and the Defendant/Appellant was sentenced on October 25, 1996. Adult Probation and Parole recommended commitment to the Utah State Prison.

D. Standard of Review

An appeal of jury verdict, the review of the evidence and all inferences reasonable drawn therefrom are to be reviewed in the light most favorable to the verdict by the jury. State v. Verde, 770 P.2d 116, 124 (Utah 1989).

E. Statement of Facts

On or about the 18th day of May, 1996,

Defendant/Appellant, Richard Ramirez, was charged with one count of Forcible Sodomy, a First-Degree Felony; one count of Dealing in Harmful Material to a Minor, a Third-Degree Felony; one count of Failure of Sex Offender to Register, a Class A Misdemeanor; and one count of Lewdness, a Class B Misdemeanor.

On May 18, 1996, Defendant/Appellant was an employee of Pinewoods Resort on Cedar Mountain near Duck Creek Village, Kane County, Utah. On the same date, the alleged juvenile victim (hereinafter "S.G."), who was then fifteen years of age, visited the Defendant/Appellant at the condominium unit in which Defendant/Appellant was residing at Pinewoods Resort. Defendant/Appellant was thirty-seven years of age.

At trial, S.G. testified that the Defendant/Appellant exhibited one Playboy and one Hustler magazine to the S.G. Upon cross examination, S.G. was unable to state with any particularity what he observed in the magazines or that he really spent any time examining the photographs therein. In addition, there was no testimony that S.G. was in any way aroused by the photographs in the magazines.

After allegedly viewing the magazines, S.G. alleged that Defendant/Appellant engaged in three acts of sodomy on three separate occasions on the same day. S.G. stated that there were no threats, coercion or other undue influence by Defendant/Appellant to cause S.G. to engage in the acts of sodomy. Furthermore, there was ample evidence elicited on both cross examination and from other witnesses that S.G. had every opportunity to flee from the scene or otherwise sexual contact with Defendant.

Defendant/Appellant was found guilty by jury verdict on one count of Forcible Sodomy, a First-Degree Felony; one count of Dealing Harmful Material to a Minor, a Third-Degree Felony; and one count of Lewdness, a Class B Misdemeanor.

It was ordered that a Pre-Sentence Investigation Report be prepared in the case. At sentencing, the Court considered and took into account the Pre-Sentence Investigation Report in committing the Defendant/Appellant to prison. The Defendant/Appellant was sentenced to serve a term of imprisonment in the Utah State Prison for a period of five (5) years to life on Count I; on Count II, Dealing Harmful Material to a Minor, a Third-Degree Felony, Defendant/Appellant was sentenced to serve zero (0) to five (5) years in the Utah State Prison; and on Count IV, Lewdness, a Class B Misdemeanor, Defendant/Appellant was ordered to served six (6) months in the Kane County Jail. The terms of imprisonment are to run concurrently.

SUMMARY OF ARGUMENT

There was insufficient evidence to convict the Defendant/Appellant on Counts I and II of the Information, and the trial court erred in failing to grant Defendant/Appellant's Motion for Directed Verdict.

Defendant/Appellant was denied his constitutional right to effective assistance of counsel in that former defense counsel failed to show Defendant/Appellant his Pre-Sentence Investigation Report prior to sentencing and in that, prior to trial, former defense counsel failed to motion the Court for a suppression

hearing as it related to the search warrant and subsequent arrest of Defendant/Appellant.

ARGUMENT

POINT ONE

THERE WAS INSUFFICIENT EVIDENCE TO CONVICT THE DEFENDANT/APPELLANT OF COUNTS I AND II OF THE INFORMATION AND THE TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANT/APPELLANT'S MOTION FOR DIRECTED VERDICT.

In State v. Ross, 782 P.2d 529 (Ut. Ct. App. 1989), the Utah Court of Appeals addressed the standard of review for the sufficiency of evidence and stated:

We review the evidence and inferences which may reasonably be drawn from it in the light most favorable to the verdict of the jury, in reviewing the conviction, we do not substitute our judgment for that of the jury. It is the exclusive function of the jury to weigh the evidence and to determine the credibility of the witness. So long as there is some evidence, including reasonable inferences, from which findings of all the requisite elements of the crime, our inquiry stops.

In the instant case, the jury verdicts are illogical and are not supported by the evidence. The Defendant/Appellant was found guilty on counts I and II of the Information which arose from incidents which occurred on May 18, 1996. At no time during the trial did the S. G. state that he was forced into having sodomy with the Defendant/Appellant. In addition, there was no corroborating evidence which would support the conviction on count I. Also, S.G. was unable to state with any particularity what he observed in the magazines or that he spent any time examining the photographs therein. In addition, there was no testimony that S. G. was in any way aroused by the photographs in the magazines. As

a result, Defendant/Appellant's counsel was right to move the court for a directed verdict. The trial court erred in denying Defendant/Appellant's Motion for Directed Verdict given that there were not sufficient facts necessary for a jury to make a determination on these charges.

POINT TWO

DEFENDANT/APPELLANT WAS DENIED HIS CONSTITUTION RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN FORMER DEFENSE COUNSEL FAILED TO SHOW DEFENDANT/APPELLANT HIS PRE-SENTENCE INVESTIGATION REPORT AS WELL AS FORMER DEFENSE COUNSEL'S FAILURE TO MOTION THE COURT FOR A SUPPRESSION HEARING AS IT RELATED TO THE SEARCH WARRANT AND SUBSEQUENT ARREST OF DEFENDANT/APPELLANT

Anyone charged with a crime is guaranteed adequate assistance of counsel. U.S. Const. Amend. VI. The right has been held to be the "right to effective assistance of counsel." State v. McNicol, 554 P.2d 203, 204 (Utah 1976).

In order to establish a claim of ineffective assistance of counsel, defendant must (1) rebut the presumption that counsel's conduct fell within the wide range of reasonable professional assistance, and (2) show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668 (1983). A reasonable probability is defined as "a probability sufficient to undermine confidence in the outcome." Id. at 694.

In determining whether deficient performance of counsel prejudiced defendant's defense, appellate court should consider the totality of evidence, taking into account such factors as whether

errors affected the entire evidentiary picture or have an isolated effect, and how strongly the verdict is supported by the record. State v. Templin, 805 P.2d 182 (Utah 1990).

It is counsel's duty to determine the issues and investigate and research law surrounding the case when preparing for trial. Id. Under Strickland, the Sixth Amendment imposes on counsel a duty to investigate, because reasonable effective assistance must be based on professional decisions, and informed legal choice can only be made after investigating options. The first prong of the Strickland test gives great deference to the attorney in terms of strategy and trial tactics, and the defendant must overcome the presumption that the challenged action was sound trial strategy under the circumstances. Id.

In the present case, the Defendant/Appellant was convicted on Dealing Harmful Material to a Minor, a Third-Degree Felony, based solely on evidence that the police retrieved from Defendant/Appellant's residence a Playboy and Hustler magazine. The magazines were not found in plain view and were found only at the end of the search by law enforcement officers. The victim was unable to state with any particularity what he observed in the magazines or that he really spent any time examining the photographs therein; therefore, admitting the magazines as evidence, became the most critical evidence relating to this charge. Furthermore, former defense counsel told Defendant/Appellant at the preliminary hearing that it appeared that there was a suppression issue in this case. The suppression issue would have been extremely important in that had the Court

found that officers Johnson and Kitchen conducted their search outside the scope of the search warrant, the magazines would not have been admissible as evidence.

According to Strickland, former defense counsel, had a duty to recognize, research and investigate those issues for trial. It is clear from former defense counsel's performance that former defense counsel did not follow through with investigating this issue as it related to a possible suppression issue.

Defendant/Appellant was also not afforded his constitutional right to read his Pre-Sentence Investigation Report prior to sentencing. Former defense counsel did not discuss with Defendant/Appellant the contents of his Pre-Sentence Investigation Report. Defendant/Appellant has a right to discuss his case with counsel. Defendant/Appellant found errors in said Pre-Sentence Investigation Report which could have changed the Court's recommendation of commitment to the Utah State Prison.

CONCLUSION

Defendant/Appellant respectfully requests that this Court reverse his conviction and remand this case for a new trial.

SUBMITTED this 31st day of December, 1997.



KEITH C. BARNES
Attorney for Defendant/Appellant

MAILING CERTIFICATE

I hereby certify that I mailed a two (2) true and correct copies of the above and foregoing BRIEF OF APPELLANT to Barnard N. Madsen, Assistant Utah Attorney General, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 31st day of December, 1997, first class postage fully prepaid.

A handwritten signature in black ink, appearing to read 'Keith C. Barnes', written over a horizontal line.

KEITH C. BARNES
Attorney for Defendant/Appellant

ADDENDUM

COLIN R. WINCHESTER [4696]
KANE COUNTY ATTORNEY
76 North Main Street
Kanab, Utah 84741
Telephone: (801) 644-5278
Facsimile: (801) 644-2281

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR KANE COUNTY
STATE OF UTAH

This matter came before the Court for sentencing on October 25, 1996. The State of Utah was represented by the Kane County Attorney, Colin R. Winchester. The Defendant was present and was represented by counsel, Floyd W. Holm. The Court had previously ordered that a pre-sentence investigation report be prepared by Adult Probation and Parole, and the report was received and reviewed by the parties and counsel prior to sentencing. The parties made sentencing recommendations.

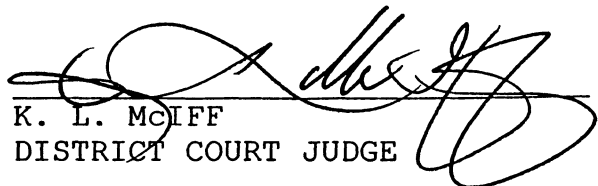
BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED AS FOLLOWS:

1. SENTENCE. On Count 1, Forcible Sodomy, a First Degree Felony, Defendant is sentenced and ordered to serve 5 years to life in the Utah State Prison; on Count 2, Dealing Harmful Material To a Minor, a Third Degree Felony, Defendant is sentenced and ordered to serve 0 to 5 years in the Utah State Prison; on Count 4, Lewdness, a Class B Misdemeanor, Defendant is sentenced and ordered to serve six months in the Kane County Jail. The terms of imprisonment shall run concurrently.

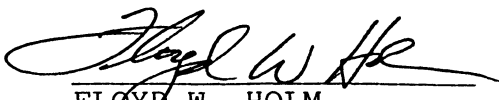
2. RIGHT OF APPEAL. Defendant has 30 days from date hereof in which to appeal the sentence of the Court.

DATED this 25th day of October, 1996.

BY THE COURT:


K. L. McIff
DISTRICT COURT JUDGE

Approved as to form:


FLOYD W. HOLM
Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that on the 28th day of October, 1996, I served a true and correct signed copy of the foregoing JUDGMENT AND SENTENCE to each person or entity listed below:

Floyd W. Holm
P. O. Box 765
Cedar City, Utah 84720

(via first class mail)

Adult Probation and Parole
835 East 300 North #500
Richfield, Utah 84701

(via first class mail)

Kane County Sheriff
76 North Main Street
Kanab, Utah 84741

(via hand delivery)

Marcel P. Brad-

PRIVATE

STATE OF UTAH
ADULT PROBATION AND PAROLE
Region VI, Richfield Office
835 East 300 North, Suite 500
Richfield, Utah 84701
Telephone: (801) 896-2770

PRESENTENCE INVESTIGATION REPORT

Date Due: 10/23/96
Sentencing Date: 10/25/96

JUDGE K. L. MCIFF SIXTH DISTRICT COURT

KANAB KANE UTAH
(CITY) (COUNTY)

Reid J. Bean INVESTIGATOR

NAME: RAMIREZ, Richard
ALIASES: Richard Hernandez,
Robert Rodriguez, Manuel Lorenzo,
Ulesis Ajular, Rich Ramirez
ADDRESS: Kane Co. Jail
BIRTHDATE: 11/01/58 **AGE:** 37
BIRTHPLACE: Hobbs, New Mexico
LEGAL RESIDENCE: California
MARITAL STATUS: Never Married

COURT CASE NO: 961600062
OBSCIS NO: 00120433
CO-DEFENDANTS: Non-applicable
OFFENSES: Forcible Sodomy, 1st Deg. Felony,
Dealing Harmful Material to a Minor, 3rd Degree
Felony, Lewdness, Class B Misdemeanor
PLEA: Not Guilty **CONVICTION DATE:** 08/28/96
PROS. ATTORNEY: Colin Winchester
DEF. ATTORNEY: Floyd Holm

PLEA BARGAIN: There is no plea bargain in this case. The defendant was originally charged with four counts. Count I: Forcible Sodomy, a First Degree Felony; Count II: Dealing Harmful Material to a Minor, a Third Degree Felony; Count III: Failure of Sex Offender to Register, a Class A Misdemeanor; and Count IV: Lewdness, a Class B Misdemeanor. At the Preliminary Hearing, the State dismissed Count III, Failure of Sex Offender to Register, and he was bound over on the remaining counts. On August 28, 1996, the defendant was convicted by a jury of Counts I: Forcible Sodomy, First Degree Felony; Count II: Dealing Harmful Material to a Minor, Third Degree Felony; and Count IV: Lewdness, a Class B Misdemeanor.

SOURCE OF INFORMATION: Kane County Attorney's Office

OFFICIAL VERSION OF OFFENSE: "On May 20, 1996, I (Officer Allen Johnson) was contacted by Anna Godbey of Kanab, Utah. She reported that her 15 year old son had been sexually molested.

That on May 20, 1996, I interviewed Anna's son, Christopher, at the Kane County Sheriff's Officer. Christopher's date of birth is 10-10-80 and he is 15 years of age. Christopher stated that on May 18, 1996, he was staying at his father's camp by Pine Woods Inn on Cedar Mountain which is located in Kane County, State of Utah. That he further stated he visited a friend named "Richard" that resides in Pine Woods Inn, Room #4. "Richard" is approximately 30 years of age. That Christopher had visited "Richard" in the past and had a friendly relationship with him.

That upon visiting "Richard" on the 18th day of May, 1996, at Room #4, Pine Woods Inn, Richard showed Christopher pornographic material in the form of magazines. Christopher identified some of these magazines as "Playboy" and "Hustler" and they depicted nude people in sexually explicit poses.

That "Richard" had Christopher accompany him to the upstairs of Room #4. After entering the room, "Richard" began to fondle Christopher's penis and then removed Christopher's pants to his knees. "Richard" then put Christopher's penis in his mouth and proceeded to lick it.

That soon there after, this was interrupted by Christopher's cousin, Eric Robey, who appeared at Room #4.

That after Robey left, "Richard" took Christopher back to the upstairs room and again, began

OFFICIAL VERSION OF OFFENSE: (Continued)

to lick Christopher's penis. During this episode, "Richard" pulled his own pants down and began to masturbate.

That again, Roby interrupted this by returning to Room #4.

That "Richard" then had Christopher meet him at a three story house close by the Pine Woods Inn. "Richard" had a key to the house and had Christopher take his bike into the house and would not let him leave it on the front porch.

That "Richard" took Christopher to the third floor of this house. The door had a peep hole and the number 5 on it. "Richard" then proceeded to again pull down his and Christopher's pants. "Richard" once again began to lick Christopher's penis and had to masturbate. This happened until Christopher climaxed and then they left the house.

That "Richard" told Christopher not to tell anyone of this experience.

That "Richard" is described as a Hispanic male, about 5'9" tall, approximately 36 years of age and is described as being in great shape or "buff", and claimed to be able to bench press 480 pounds. "Richard" told Christopher that he previously engaged in several sexual experiences with other young men, and that he is a child psychologist."

Based upon the above information, a search warrant was obtained and Mr. Ramirez was arrested and charged with Forcible Sodomy, Gross Lewdness, Failure to Register as a Sex Offender, Distributing Pornographic Material to a Minor.

SOURCE OF INFORMATION: Kane County Sheriff's Department, Case #9605121.

DEFENDANT'S VERSION OF OFFENSE: "On the day and date of May 18th of 1996) Early that afternoon at about 1 or 2 pm. I walked over to Edward Godbe "Christopher fathers camper to explain the reason I would not be able to work for him that week however when I reached the camper and wood cutting area and work site Christpher and his cousin Eric were hard at work splitting wood and when they seen me coming they both stoped and took a break and came to greet me at that point I asked both Eric and Christopher as to the were abouts of "Mr." Godby. I was told that "Mr. Godby" was out on business and would not be back for some time. At that point I invited both Eric and Christopher to have dinner and maybe watch a video or two Christopher asked me if my girlfriend's daughter Lee Ronn would be there and I said yes

DEFENDANT'S VERSION OF OFFENSE: (Continued)

and you can ask her if she would like to go bike riding with you at that point Christopher was very happy and Eric said Chris let's get back to work and at that point I left and walked back to the Pinewoods Inn and Restaurant where I live with my girlfriend Sandy and her 11 year old daughter "Lee Ann", whom I've cared for the past 2 ½ years as my very own daughter and I went back to work doing what I do there and when I was through working I went to condo (4) where I've been staying for the past 4 days. I was watching T.V.) and at about 4: or 5 pm "Eric and "Chris appeared at my front door at Condo #4) and I open the door and "Chris and "Eric came in side and sat down. I asked if "Mr. Godby" return and if he would joining us I was told no, then I asked if Eric would like a beer and if Christopher would like a coke and they both answered "yes" so I went in to the kitchen and when I opened my refrigerator and saw I had no Coke's I asked Chris if he wanted to go downstairs to the game room and buy a Coke from the Coke machine Christopher said no that ok that is when "Eric said we have some Coke's in the camper and since "Christopher was too busy looking through the "video" I had to watch which one to watch first Eric said I'll be right back and left. I told Christopher when you've found that video tape you'd like watch then first put it on, and watch it "ok. I'll be right back at that point I walked out the door of Condo #4) downstairs to the Pinewoods Restaurant to let "Ed" who is the cook and who I also work for at Pinewoods Inn and whom is my Girlfriend nephew know not to cook for me. However before I could say anything I myself had been invited out for dinner and there was no way I could refuse due to the fact that I was invited to dinner by Mr & Mrs Floyd Anderson, whom are the owners of the Pinewood Inn. So I walked back up to condo #4 to let "Chris & "Eric know. However Eric had not returned so "Christopher and I sat in the living room and watched the video tape "Dumb and "Dumber. About (5 to 10) minutes later Eric walked up to the door of Condo # 4 I knew it was "Eric I could see him through the living room window from where I was sitting, so I waved my hand motioning for Eric to come in and at about the same time I got up from my seat to let Eric in the door opened and in walked Eric with the Coke's and a chess game at that point I explained to both Eric and Chris that I would be going out for dinner however if you both would like you both could stay here and watch tv or video's and if you like there is some meat in my refrigerator you can cook and eat that is if you and Chris would like to stay here while I'm gone I going to take a shower and get ready to go out. When I get out of the shower you let me know what you decided ok "Eric & "Chris. So about (15 & 20) minutes after I was through with my shower. I asked what do guys want to do "Eric said Richard if its ok me and "Chris will just stay here and wait for you then Eric asked if he could cook the roast beef. I answer of course you can "Eric. "Eric then asked if I had any Cooking spices. My answer was no. Eric then said I guess I need to go back to the camper and again "Eric asked "Christopher if he would like to go and get the spices however Chris answer no you go Eric and Eric did go it took about ten minutes Chris and I

DEFENDANT'S VERSION OF OFFENSE: (Continued)

were playing a chess game and watching TV and when Eric returned I stayed long enough to drink a beer and I left with my girlfriend Sandy and the rest of the crowd. About 3 to 4 better I'll say ten - 10 pm May 18/96 we call returned and when I returned to condo #4) to me everything looked "ok" I hadn't been home for more than 15 minutes when Lee Ann came and asked me to help her hook up the VCR in Condo #3 and I asked Chris to do it and after that night I'd handt seen Christopher till court. However I did work for Chris father on May 19-22-1996."

/s/ Richard Ramirez Dated: 9-09-96

COMMENTS: During the defendant's interview with this investigator, he showed no remorse or accepted any responsibility for the present offenses. He adamantly denied performing the explicit sexual acts on the victim and claimed that the victim is lying.

SOURCE OF INFORMATION: Defendant

CO-DEFENDANT STATUS: Non-applicable

SOURCE OF INFORMATION: Non-applicable

VICTIM IMPACT STATEMENT: The identifiable victim in this case is Christopher Godbey, who at the time of the offense was 15 years of age. The victim's mother was the reporting party in this case and since the date of the offenses, she has passed away. Prior to her death, she involved child protective services, however, it is unknown whether or not the victim is currently receiving counseling. This investigator has attempted to contact the victim's father, Edward Godbey, and the victim via mail and telephone, however, as of the date of this writing no response has been received. Officer Allen Johnson of the Kane County Sheriff's Department was also contacted by this investigator and asked to contact the victims father to give him an opportunity to provide a statement, but again, no response has been received for the Courts review.

SOURCE OF INFORMATION: Information received from Officer Alan Johnson.

RESTITUTION: This investigator is unaware of any restitution owing in this case.

SOURCE OF INFORMATION: Non-applicable

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PRESENTENCE INVESTIGATION REPORT
RAMIREZ, RICHARD

CUSTODY STATUS: The defendant was arrested on May 22, 1996, and he is currently incarcerated in the Kane County Jail.

SOURCE OF INFORMATION: Kane County Sheriff's Department

LAW ENFORCEMENT STATEMENT: The following letter was received from Chief Deputy Allen Johnson of the Kane County Sheriff's Department and it is typed verbatim as follows:

"I am writing in regards to the Presentence Investigation involving Richard Ramirez. I was the investigating officer and am quite concerned that justice is served regarding this case.

I feel that after interviewing Ramirez after his arrest, he claimed no fault in the case and did not admit to wrong doing. Even after being found guilty by a jury of his peers, he refused to admit fault or acceptance to his actions. After doing a criminal history, it appears that this is not an isolated event and he has been arrested in the past for similar acts. He had been committed to prison in California and was recently released from their facility. He was a registered sex offender in the State of California, but moved to Utah, in my opinion, to avoid the title of being a sex offender. In fact, Ramirez admitted to me that he used an assumed name after being released from prison.

It is my opinion that Ramirez is a dangerous man to be out on the streets even if being on probation. My recommendation is that he be sentenced to prison, and when the time is appropriate he complete a long term sex offender treatment program. If he is placed on probation, it is my opinion he will leave the area and prey on other communities and their children. We need to stop him now. Thank you for your time."

/s/ Allen Johnson, Chief Deputy

SOURCE OF INFORMATION: Chief Deputy Allen Johnson of the Kane County Sheriff's Department.

JUVENILE RECORD:

<u>DATE</u>	<u>AGENCY</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
08/16/73	Los Angeles PD Los Angeles, CA	Hit and Run: With Injury	Referred to Juvenile Authority

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PRESENTENCE INVESTIGATION REPORT
RAMIREZ, RICHARD

JUVENILE RECORD: (Continued)

<u>DATE</u>	<u>AGENCY</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
07/06/75	Los Angeles PD Los Angeles, CA	Grand Theft Auto	Petition Requested, placed at Boys Town Placement Facility For one year.

COMMENTS: In addition to the above offenses and according to the California Department of Corrections, the defendant also indicated in a previous Presentence Report completed by California authorities, that he was placed on probation for various offenses, however, his records had been destroyed and the defendant was unable to provide dates and specific offenses of the incidents.

SOURCE OF INFORMATION: Defendant and the California Department of Corrections

ADULT RECORD:

<u>DATE</u>	<u>AGENCY</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
03/02/79	Los Angeles PD Los Angeles, CA	Poss. of Concentrated Cannabis, Hashish	Convicted/\$50 fine
05/03/79	Los Angeles Metro Los Angeles, CA	Poss. Of Cannabis	Dismissed, furtherance of Justice
09/02/80	Los Angeles Metro Los Angeles, CA	Grand Theft Auto Reckless Driving Hit and Run/Property Damage	Convicted of Taking Vehicle without Owner Consent/Vehicle Theft, Reckless Driving Alcohol Related
08/02/81	Beverly Hills PD Beverly Hills, CA	Burglary	Convicted/3 yrs. Probation, 180 days jail
02/1982	Los Angeles Monica Los Angeles, CA	Received/Known Stolen Property 2 CTS	Dismissed

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PRESENTENCE INVESTIGATION REPORT
RAMIREZ, RICHARD

ADULT RECORD: (Continued)

<u>DATE</u>	<u>AGENCY</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
07/19/82	Los Angeles, CA	Theft Burglary-2nd Degree	Convicted, 36 months probation
10/21/82	Los Angeles PD Los Angeles, CA	Take Vehicle without Owner Consent/Vehicle Theft	Convicted
12/13/83	Los Angeles, CA	Receive/Known Stolen Property, Escape from Jail/With Felony/Violence	Convicted
04/30/84	Los Angeles Central Los Angeles, CA	Take Vehicle Without Owner Consent	Convicted, committed to prison, 2 years.
05/04/84	California Dept. Corrections	Probation Violation	Committed to Prison
05/08/84	Chino Correctional Facility Vehicle Theft Burglary-2nd Degree		Received
08/15/84	South Gate PD South Gate, CA	Lewdness/Lasciv Acts with Child Under 14	

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PRESENTENCE INVESTIGATION REPORT
RAMIREZ, RICHARD

ADULT RECORD: (Continued)

<u>DATE</u>	<u>AGENCY</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
01/02/85	Los Angeles Norwalk Los Angeles, CA	1. Lewdness/Lasciv Acts with Child Under 14; 2. Lewdness/Lasciv Acts with Child Under 14; 3. Oral Copulation with Person Under Age 14 or by Force; 4. Oral Copulation with Person Under Age 14 or by Force; 5. Lewdness/ Lasciv Acts with Child Under 14.	Convicted of Counts III and V Committed to 3 years prison
01/08/85	California Dept. Corrections	Parole Violation	Parole Revoked
10/1987	California Dept. Corrections	Paroled	
12/01/87	Los Angeles Los Angeles, CA	Grand Theft Auto	Unknown
02/20/88	California Dept. Corrections	Absconded from Parole	Fugitive
01/06/90	Los Angeles, CA	Burglary, Grand Theft Auto, False ID to Peace Officer, Failure to Register as Sex Offender, Fugitive from Parole, Alcohol Violation	Prosecution deferred for Revocation of Parole

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PRESENTENCE INVESTIGATION REPORT
RAMIREZ, RICHARD

ADULT RECORD: (Continued)

<u>DATE</u>	<u>AGENCY</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
01/1990	California Dept. Corrections	Parole Violation	Parole revoked to finish term
10/05/90	California Dept. Corrections		Paroled
11/16/90	California Dept. Corrections	Absconded from Parole	Fugitive
05/05/91	Los Angeles Los Angeles, CA	Burglary of a Vehicle, Assault with Deadly Weapon, Poss. of Drug Paraphernalia, False ID to Peace Officer, Fugitive from Parole	Convicted, committed to prison, parole revoked
09/19/92	Los Angeles PD Los Angeles, CA	Burglary Threaten/Harass Another Failure to Register as Sex Offender, Failure to Report to Parole Department, Poss. Of C/S	Return to Prison, Parole Violation
10/05/92	Los Angeles Central Los Angeles, CA	Burglary, 2nd Degree	Committed to Prison, 2 years
06/17/94	California Dept. Corrections	Paroled	
06/28/95	California Dept. Corrections	Parole Terminated Interest Closed	

ADULT RECORD: (Continued)

<u>DATE</u>	<u>AGENCY</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
05/22/96	Kane County SO Kanab, UT	Forcible Sodomy, 1st Degree, Dealing in Harmful Material, 3rd Degree, Exhibited Harmful Material to a Minor, Class B Misdemeanor, Lewdness, Class B Misd. Failure to Register as a Sex Offender	PRESENT OFFENSE Convicted by Jury 08-28-96 of Forcible Sodomy, 1st Degree Felony; Dealing Harmful Material to a Minor, 3rd Degree Felony; and Lewdness, Class B Misd.
07/12/96	Kane County SO Kanab, UT	Theft of Firearms, 3rd Degree Felony, Poss. Of Dangerous Weapon by Restricted Person, 3rd Degree Felony	Pending as of the date of this Writing.

SOURCE OF INFORMATION: Kane County Sheriff's Department, FBI #103038B11, California SID #A05055548, California DL #B5149456, Utah SID #0450438, and records received from the California Department of Corrections.

DRIVING HISTORY: Please refer to the defendant's criminal history for this information.

SOURCE OF INFORMATION: Non-applicable

PENDING CASES: As of the date of this writing, the defendant has been charged with two additional felonies, Theft and Possession of Dangerous Weapon by a Restricted Person, both Third Degree Felonies, which are pending in the Sixth District Court, Kane County.

SOURCE OF INFORMATION: Kane County Attorney's Office

PROBATION/PAROLE HISTORY: From the information available, Richard Ramirez's criminal history began in 1973 and has continued to 1996. The defendant was originally referred to the California Juvenile Authorities beginning in 1973 for the offenses of Hit and Run, Vehicle Theft, and for being incorrigible. In 1973, the defendant was placed in a residential placement for young offenders where he remained for one year. Little else is known about the defendant's juvenile history, as his juvenile records have since been destroyed and because the defendant was raised in the State of California.

As an adult, the defendant has numerous arrests and convictions spanning a 17 year period. He has convictions for Possession of a Controlled Substance, Grand Theft Auto, Vehicle Theft, Driving Under the Influence, Burglary, Escape, Receiving Known Stolen Property, Lewdness, Lasciv Acts with Children Under the age of 14, Oral Copulation with a Child Under the Age of 14 by Force, False Information to a Peace Officer, Assault with a Deadly Weapon, Failure to Register as a Sex Offender, and as a result of his numerous arrests and convictions, he has either been placed on informal probations or supervised probation or parole.

The records of the California Department of Corrections reflect a history of total non-compliance to the conditions of his supervision. Mr. Ramirez simply failed to adhere to the rules of society and was consistently either using controlled substances or committing new criminal offenses and being referred back to prison. The defendant had problems in reporting to his probation and parole officers, he failed to maintain a residence of record, failed to maintain employment, failed to participate in therapy, and as a stated above, was returned to prison on numerous occasions. Overall, it appears that Mr. Ramirez' probation/parole history was extremely poor and he is considered to be a very poor candidate for probation in the present offense.

SOURCE OF INFORMATION: Defendant, defendant's criminal history, and information received from the California Department of Corrections.

BACKGROUND AND PRESENT LIVING SITUATION: Richard Ramirez was born on November 01, 1958 in Hobbs, New Mexico, to John and Eva Ramirez and is the fourth sibling of six children born of this union. The defendant reported after his birth, the family moved to Los Angeles, California, where he resided until March of 1996, at which time, he moved to the State of Utah and specifically, Cedar Mountain. The defendant described his childhood in general, by stating that "I was loved by all my brothers and sisters. They took care of me since I was the youngest of all." He reported that he was raised in a lower class environment and indicated that he encountered no particular problems in his childhood until the age of 10. The defendant stated that he was sexually abused between the ages of 10 and 13 by a

BACKGROUND AND PRESENT LIVING SITUATION: (Continued)

neighbor and he indicated that he has never told anyone of the abuse, not even his parents and he had received no counseling. The defendant reported that at the age of 14 he began having problems and was eventually placed into the Boys Republic Chino Boarding School where he remained for two years. He stated that he subsequently left the home and was forced to return home after being on the street for one month. The defendant indicated that he then lived at home and with various people and eventually left home at the age of 22. He described his relationship with his family as being poor, except for his mother and his brother, George, and stated that they have been supportive in his life. The defendant further indicated that he is the only one in his family that has had problems with the law and stated that he has a brother that is a mayor, one that works at UCLA as a computer professor, and two others that own businesses in Los Angeles. It should be noted that a collateral letter was mailed to the defendant's mother requesting information regarding the defendant, however, as of the date of this writing, no response has been received. In addition to the above information, the defendant reported that he has spent long periods of his adult life living as a transient, especially when he paroled from the California State Penial system. That information was confirmed by the California Department of Corrections, as in several of their reports they stated that "the defendant lived a transient lifestyle, failed to maintain employment and was very unstable." In addition to the above information, the defendant has provided a brief history of his life and it is typed verbatim as follows:

"Well as far back as I honestly remember I would say at the age of (4) I was inrolled in kindergarten 10th street school in Los Angeles, CAL. I remember very well due to the fact that all of my brothers and I attended that elementary school at about the same time and when my brothers began to gradate from this school that added on to my problems and when I has attending I've high thing just got worse I was kick out of school due to my behavior problems. I've high is when I began to understand that nobody really care's about any one else and that really scared me very much and with no one to talk to about how I felt and I want you to know I'm not telling this for sympathy "no" the reason I'm telling you all this is because no one has ever asked me about the history of my life. I guess I was wrong all this time about people in this society or am I right? Will let me get back to my time in high school thing began to change dramatically particularly"

SOURCE OF INFORMATION: Defendant

MARITAL HISTORY: The defendant reported that he has never been married, but reported several past relationships. He reported a relationship with a Ms. Christina Maza and through that relationship he has one daughter, Rachel, age 8. The defendant reported that he believes his daughter is residing in Tiwana, Mexico, and stated that he has not seen her since her birth. At the time the defendant committed the present offense, he was involved in a relationship with a Ms. Sandra Bannetior. He reported no children being born as a result of that relationship and they have no plans for marriage. Ms. Bannetior has one daughter, Lee Ann, age 12.

SOURCE OF INFORMATION: Defendant

EDUCATION: The defendant reported that he completed his high school education up through the 11th grade at Bellmount High School in Los Angeles, California. That he discontinued his education because he had to work. Since, he has not pursued his high school education, nor has he pursued vocational training.

SOURCE OF INFORMATION: Defendant

GANG AFFILIATIONS: The defendant reported that he is not affiliated with any gangs and no information has been brought to the attention of this investigator to the contrary.

SOURCE OF INFORMATION: Defendant

PHYSICAL HEALTH: The defendant described his present physical health as being good, except for a "deteriorating fourth lumbar in his back." He stated that he is not under any current medical treatment or taking of any medications.

SOURCE OF INFORMATION: Defendant

MENTAL HEALTH: The defendant described his present mental and emotional health as being "very unstable" because of his current circumstances. He reported that he has never been referred to any psychologists or psychiatrists in the past, except at the age of 15 for hyperactivity. He did indicate that while incarcerated in the State of California, he was required to take medication to control his behavior, and in regards to the defendant's past sex convictions, he claims that he was not required to participate in counseling. Contrary to Mr. Ramirez' statements and according the information received from the California Department of Corrections, Mr. Ramirez was required to participate in substance abuse counseling and sex offender therapy, however, Mr. Ramirez simply failed to comply with those requirements.

SOURCE OF INFORMATION: Defendant and information received from the California Department of Corrections.

ALCOHOL HISTORY: The defendant reported that he first began consuming alcoholic beverages at the age of 14 and that alcohol consumption has continued to the present. The defendant reported that he has a current problem with alcohol and acknowledged that he is an alcoholic. He indicated that he was consuming an excessive amount of beer while residing on Cedar Mountain and indicated that he would be willing to participate in substance abuse counseling if ordered.

SOURCE OF INFORMATION: Defendant

DRUG HISTORY: The defendant reported that he began using controlled substances at the age of 17 and the use has included PCP, LSD, Marijuana, Mushrooms, Cocaine, and Methamphetamine. The defendant stated that his drug of a choice is PCP, and he acknowledged having a drug abuse problem, which resulted in him committing the majority of his criminal offenses. The defendant denied ever distributing controlled substances and stated that he has not used controlled substances since 1994. He reported no prior counseling for his use of illegal drugs and he denied having a current problem with drugs, nor does he feel that he is in need of substance abuse counseling. In reviewing the defendant's criminal history and the records obtained from the California Department of Corrections, there are doubts in regards to Mr. Ramirez' statement. He has been involved with controlled substances for the majority of his adult life and it appears that he was using controlled substances on a regular basis while on probation and parole in California.

SOURCE OF INFORMATION: Defendant and information received from the California Department of Corrections.

EMPLOYMENT HISTORY:

The defendant's Social Security Number is 561-39-9360. The defendant reported that at the time of his arrest, he was employed as a labor for the Pinewood Restaurant and Inn located at the Duck Creek Village on Cedar Mountain. The defendant reported that prior to moving to the State of Utah, he lived a transient lifestyle and did not maintain steady employment. The defendant was unable to provide any specific information pertaining to complete employment history and he is considered to have a poor employment history at this time.

SOURCE OF INFORMATION: Defendant and information received from the California Department of Corrections.

FINANCIAL SITUATION: As a result of the present offense, Mr. Ramirez has been incarcerated and therefore has not be able to maintain any financial stability. In lieu of his present circumstances, the defendant is considered to be in poor financial condition at this time.

SOURCE OF INFORMATION: Defendant

MILITARY RECORD: Non-applicable

SOURCE OF INFORMATION: Non-applicable

COLLATERAL CONTACTS: As of the date of this writing, no letters have been received for the Court's review.

EVALUATIVE SUMMARY: Appearing before the Court for sentencing is Richard Ramirez, a 37 year old male, Hispanic, who on August 28, 1996, was convicted of Forcible Sodomy, a First Degree Felony, Dealing Harmful Material to a Minor, a Third Degree Felony, and Lewdness, a Class B Misdemeanor. The offenses for which the defendant is before the Court, involved the defendant sexually assaulting a 15 year old male on or about May 18, 1996, at his residence located on Cedar Mountain. The defendant in this case had befriended the victim and had invited him to his apartment where he allowed the victim to take showers in the past and watch television. On the date of question, Mr. Ramirez showed the victim pornographic material which depicted nude people in sexually explicit poses. The defendant then began to fondle the victim's penis and then removed the victim's pants to his knees. The defendant then put the victim's penis in his mouth and proceeded to lick it. Soon after, the defendant and the victim were interrupted by the victim's cousin, but after he left, the defendant again began to sexually molest the victim. They were once again interrupted by the victim's cousin, and after he left again, Mr. Ramirez took the victim to another isolated building where he continued to sexually molest the boy and to masturbate him until the victim climaxed and until he, himself, had received his sexual gratification.

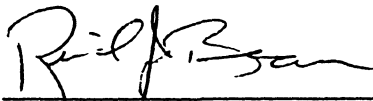
Of concern in this case is the fact that Mr. Ramirez is a convicted sex offender from the state of California. In 1985, he was convicted of Oral Copulation with a Person Under the Age of 14 by Force and Lewdness or Lasciv Acts with a Child Under the Age of 14 for which he was convicted and sentenced to three years prison. It appears that Mr. Ramirez's California

EVALUATIVE SUMMARY: (Continued)

convictions involved Mr. Ramirez befriending three young boys by inviting them to come to his house to teach them how to do karate and offering to buy them things, whereupon he lured the youngsters into his garage, forced them to pull down their pants and place their penises in his mouth. In reviewing his California convictions and the present offense, they are both very similar and are characteristic of a sex offender predator. Also of concern in this case is Mr. Ramirez's lengthy criminal history which has spanned a minimum of 17 years. Mr. Ramirez's criminal history is considered to be extensive and his probation and parole history is considered to be extremely poor.

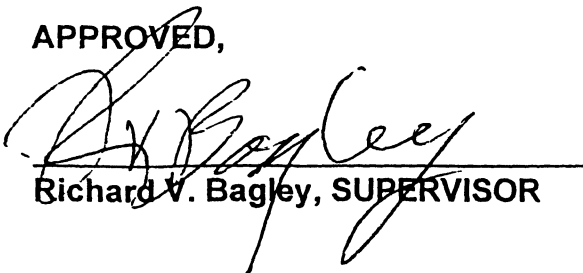
In reviewing the issues in this case, Mr. Ramirez has adamantly denied committing the present offenses both to the investigating officer and to this investigator, which are also characteristics of a sex offender. Mr. Ramirez has shown no remorse or accepted any responsibility for the present offenses occurring, and he is considered to be a threat and serious danger to the community if released on probation at this time. In considering the defendant's excessive criminal history, the seriousness of the present offenses, and lack of remorse or acceptance of any responsibility, the defendant is considered to be an extremely poor risk for probation.

RESPECTFULLY SUBMITTED,



Reid J. Bean, INVESTIGATOR

APPROVED,



Richard V. Bagley, SUPERVISOR

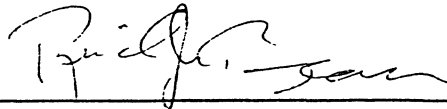
ATTACHMENTS: Criminal History, Time Matrix, Aggravating and Mitigating Circumstances.

AGENCY RECOMMENDATION

The Offender Risk/Needs Assessment classifies the defendant as a MAXIMUM probation candidate and the Criminal History Assessment classifies the defendant as a poor candidate for probation. As previously mentioned, Mr. Ramirez is considered to be an extreme danger to the community and he poses a serious threat of re-offense if granted probation at this time.

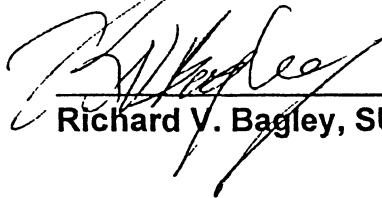
It is the Department of Corrections recommendation that Mr. Ramirez be sentenced as per statute on all three counts and he be forthwith committed to the Utah State Prison and that his sentences should run consecutive to each other. While incarcerated at the Utah State Prison, Mr. Ramirez will have the opportunity to be evaluated and can take advantage of sex offender therapy if he has the desire to do so. At this time, probation is not appropriate in this case and the Board of Pardons can and will make the appropriate decision when he is ready to be released back into the community.

RESPECTFULLY SUBMITTED,



Reid J. Bean, INVESTIGATOR

APPROVED,



Richard V. Bagley, SUPERVISOR

CRIMINAL HISTORY ASSESSMENT

PRIOR FELONY CONVICTION
(SEPARATE CRIMINAL INCIDENTS)

0 NONE
2 ONE
4 TWO
6 THREE
8 MORE THAN THREE

CRIMINAL HISTORY CATEGORY

POOR 16 - 28

FAIR 12 - 15

MODERATE 8 - 11

GOOD 4 - 7

EXCELLENT 0 - 3

PLEASE CIRCLE THE
CORRECT CATEGORY

PRIOR MISD. CONVICTIONS
(SEPARATE CRIMINAL INCIDENTS)
(INCLUDES DUI & RECKLESS)
(EXCLUDES OTHER TRAFFIC)

0 NONE
1 ONE
2 TWO TO FOUR
3 FIVE TO SEVEN
4 MORE THAN SEVEN

PRIOR JUVENILE REFERRALS
(FINDINGS OF DELINQUENT FOR
INCIDENTS THAT WOULD HAVE BEEN
FELONIES IF COMMITTED BY AN ADULT)
[3 NON-STATUS MISD. = 1 FELONY]

0 NONE
1 ONE
2 TWO TO FOUR
3 MORE THAN FOUR
4 SECURE PLACEMENT

SUPERVISION HISTORY

(ADULT OR JUVENILE)

0 NO PRIOR SUPERVISION
1 PRIOR SUPERVISION
2 PRIOR RESIDENTIAL PLACEMENT
3 PRIOR REVOCATION
4 CURRENT SUPERVISION OR PRE-TRIAL RELEASE

SUPERVISION RISK

(ADULT OR JUVENILE)

0 NO ESCAPES OR ABSCONDINGS
1 FAILURE TO REPORT (ACTIVE OFF.) OR OUTSTANDING WARRANT
2 ABSCONDED FROM SUPERVISION
3 ABSCONDED FROM RESIDENTIAL PROG. OR EXTRADITION REQ'D
4 ESCAPED FROM CONFINEMENT

WEAPONS ENHANCEMENT

(ACTIVE OFFENSE)

0 NONE
2 OTHER
3 KNIFE
4 FIREARM OR EXPLOSIVE

** NOTE: 2nd FIREARMS CONVICTION
REQUIRES A MANDATORY 5 - 10 YEAR
CONSECUTIVE SENTENCE **

TOTAL PLACEMENT SCORE: 23

GENERAL DISPOSITION MATRIX

CRIMINAL HISTORY	CRIME SEVERITY									
	CAPITAL	1ST DEGREE		PERSON CRIMES			OTHER CRIMES		MISDEMEANORS	
		MUR II	OTHER	HOMICIDE 2ND SEX	2ND DEG	3RD DEG	2ND DEG	3RD DEG	A	B
					3RD SEX					
POOR		\$10,000 ↑	\$10,000 ↑	\$10,000 ↑	\$5,000 ↑	\$5,000 ↑	\$10,000 \$5,000	\$5,000 \$2,500	\$2,500 \$2,000	\$1,000 \$800
FAIR							\$5,000 \$2,500	\$5,000 \$2,500	\$2,000 \$1,500	\$800 \$600
MODERATE				\$5,000	\$2,500	\$2,500	\$2,500	\$1,250	\$1,500 \$1,000	\$600 \$400
GOOD		\$5,000	\$5,000 \$2,500	ALTERNATE			PROBATION		\$1,000 \$500	\$400 \$200
EXCELLENT		\$5,000 \$2,500	\$2,500 \$1,250	\$2,500 \$1,250	\$1,250 \$625	\$1,250 \$625	\$1,250	\$625	\$500 \$200	\$200 \$50

DRUG DISTRIBUTION OF OR INTENT TO DIST. OVER \$500 & RESIDENTIAL BURGLARY SHOULD BE "PERSON" CRIMES

CRIME SEVERITY

		CAPITAL	1ST DEGREE		PERSON CRIMES			OTHER CRIMES		MISDEMEANORS	
			MUR II	OTHER	HOMICIDE 2ND SEX	2ND DEG 3RD SEX	3RD DEG	2ND DEG	3RD DEG	A	B
CRIMINAL HISTORY	POOR		12 YRS	10 YRS	6 YRS	36 MON	24 MON	24 MON	18 MON	12 MON	6 MON
	FAIR		10 YRS	7 YRS	5 YRS	30 MON	21 MON	21 MON	15 MON	10 MON	5 MON
	MODERATE		7 YRS	5 YRS	4 YRS	24 MON	18 MON	18 MON	12 MON	8 MON	4 MON
	GOOD		5 YRS	5 YRS	3 YRS	21 MON	15 MON	15 MON	9 MON	4 MON	3 MON
	EXCELLENT		5 YRS	5 YRS	2 YRS	18 MON	12 MON	12 MON	6 MON	3 MON	3 MON
CONSECUTIVE ENHANCEMENTS											
		36 MON	30 MON	24 MON	18 MON	12 MON	12 MON	6 MON	3 MON	3 MON	
CONCURRENT ENHANCEMENTS ADDED BY B.O.P.											
		18 MON	15 MON	12 MON	9 MON	6 MON	6 MON	3 MON	3 MON	3 MON	

DRUG DISTRIBUTION OF OR INTENT TO DIST. OVER \$500 & RESIDENTIAL BURGLARY SHOULD BE "PERSON" CRIMES

ACTIVE CONVICTIONS

		DEGREE	YEARS	MONTHS
MOST SERIOUS	<u>Forcible Sodomy</u>	<u>1</u>	<u>10</u>	<u> </u>
NEXT MOST SERIOUS	<u>Dealing Harmful Material To minor</u>	<u>3</u>	<u>3</u>	<u> </u>
OTHER	<u>lewdness</u>	<u>B</u>	<u> </u>	<u> </u>
OTHER	<u> </u>	<u> </u>	<u> </u>	<u>6</u>
		TOTAL	<u>13</u>	<u>6</u>

SENTENCES SHOULD GENERALLY BE CONCURRENT. HOWEVER, THE EXISTENCE OF THE FOLLOWING AGGRAVATING CIRCUMSTANCES SUGGEST CONSIDERATION OF CONSECUTIVE SENTENCES:

1. ESCAPE OR FUGITIVE
2. UNDER SUPERVISION OR BAIL RELEASE WHEN OFFENSE WAS COMMITTED
3. UNUSUAL VICTIM VULNERABILITY
4. INJURY TO PERSON OR PROPERTY LOSS WAS EXTREME FOR CRIME CATEGORY
5. OFFENSE CHARACTERIZED BY EXTREME CRUELTY OR DEPRAVITY

IF THE SENTENCES ARE TO BE CONSECUTIVE, USE THE CONSECUTIVE ENCHANCEMENTS
PORTION OF THE "TIME MATRIX" FOR ALL CONSECUTIVE SENTENCES EXCEPT THE
"MOST SERIOUS" CONVICTION.

AGGRAVATING AND MITIGATING CIRCUMSTANCES
(Use Form 2 For Mandatory Sentence Situations)

Circle the numbers of circumstances that may justify departure from the guidelines. Reference the page number of the presentence investigation where the judge can find supportive information.

Aggravating Circumstances

Only use aggravating circumstances if they are not implicit in the conviction offense or the calculation of criminal history score.

PSI Page #

- ☒ 1. Established instances of repetitive criminal conduct.
- ☒ 2. Offender presents a serious threat of violent behavior.
- ☒ 3. Victim was particularly vulnerable.
- ☒ 4. Injury to person or property loss was unusually extensive.
- ☒ 5. Offense was characterized by extreme cruelty or depravity.
- ☒ 6. There were multiple charges or victims.
- ☒ 7. Offender's attitude is not conducive to supervision in a less restrictive setting.
- ☒ 8. Offender continued criminal activity subsequent to arrest.
- ☒ 9. Sex Offenses: Correction's formal assessment procedures classify as an high risk offender.
- ☒ 10. Other (specify) Known Sex Offender, Failed To report To Utah
authorities.

Mitigating Circumstances

- ☐ 1. Offender's criminal conduct neither caused nor threatened serious harm.
- ☐ 2. Offender acted under strong provocation.
- ☐ 3. There were substantial grounds to excuse or justify criminal behavior, though failing to establish a defense.
- ☐ 4. Offender is young.
- ☐ 5. Offender assisted law enforcement in the resolution of other crimes.
- ☐ 6. Restitution would be severely compromised by incarceration.
- ☐ 7. Offender's attitude suggests amenability to supervision.
- ☐ 8. Domestic crime victim does not want incarceration.
- ☐ 9. Offender has exceptionally good employment and/or family relationships.
- ☐ 10. Imprisonment would entail excessive hardship on offender or dependents.
- ☐ 11. Offender has extended period of arrest-free street time.
- ☒ 12. Other (specify) none

PLEASE COMPLETE THIS SECTION

DAYS OF JAIL CREDIT _____

GUIDELINE RECOMMENDATION Prison

AP&P RECOMMENDATION Prison

REASON FOR DEPARTURE Nine

COMMUNITY DEMAND Prison

SENTENCE ACTUALLY IMPOSED _____